



BRIEFING: APRIL 2012 BOARD MEETING

TO: Chairman Richard and Board Members

FROM: Tom Fellenz, Interim Chief Executive Officer/General Counsel

DATE: April 19, 2012

RE: Agenda Item Number 10 Update on Enforcements--Informational Item

This will be an informational report to respond to two (2) questions from the Board during the March 1, 2012 Board Meeting under Agenda Item # 3 Presentation of the Terms & Conditions applicable to the Design Build.

The Board asked what sanctions exists if the Contractor does not:

- 1. Meet the Small Business goal**
- 2. Pay subcontractors promptly**

Item 1. In direct response to the Board 's request, the Small and Disadvantaged Business Enterprise Program was further amended to include additional administrative remedies to effectively address the Contractor's noncompliance in meeting their SB goal commitments as stated in the Contractor's the Affidavit and SB Performance Plan. The remedies are highlighted as follows:

- Withhold an amount equal to the difference between the actual SB attainment and the Contractor's SB goal commitment from any milestone payment that would otherwise be due until the breach is cured, including submittal of Monthly Narrative SB Progress Reports demonstrating satisfactory good faith efforts towards achieving the SB goal;
- Withhold up to the full amount of any milestone payments that would otherwise be due until the breach is cured, including submittal of Monthly Narrative SB Progress Reports demonstrating satisfactory good faith efforts towards achieving the SB goal;
- Require Contractor to prepare a Corrective Action Agreement and to make a presentation to the Authority Board at the next regularly scheduled Board meeting explain reasons for non-compliance and present the Corrective Action Agreement to remedy non-compliance. Thereafter, until such time as compliance is achieved and the Board determines that future presentations

are not needed, the Contractor provide written reports and make presentations to the Board on a quarterly basis, or more often as required by the Board;

- Penalty of \$1000 per day for each monthly Form 103 report that is overdue;
- Civil penalties for knowingly providing false information on Form 103, in the minimum amount of \$2,500 and the maximum amount of \$25,000;
- Hold a Responsibility Determination Hearing in which the Contractor's past non-compliance performance may preclude the Contractor from bidding on future projects; and or,
- Termination of the contract in part or in whole.

The Authority will continue to consider additional remedies to address this important area of compliance.

Item 2. Prompt payment mechanisms are described in State statutes and federal regulations. The prompt payment provisions are a component of the General Provisions and the S/DBE Program. The Authority is in the process of evaluating additional remedies to address noncompliance in this area and will report back to the Board accordingly.